

Vindication

Of the CASE relating to the

Greenwar-Fines,

SHEWING

How the Rights and Prerogative of the
Crown are diminished, Officers enriched,
and the Subjects oppressed by the Misman-
agement of **That Revenue.**

See T. Raym. **ALSO** *470. & 471. & 472. & 473. & 474. & 475. & 476. & 477. & 478. & 479. & 480.*

Disproving the Allegations used to
hinder a Reformation thereof; as Con-
tradictory to the Reports and Resolu-
tions of the Judges and Lawyers, and
the Experience of Persons of all Ranks
and Degrees in all Ages.

*Proved by undeniable Matter upon Record, and
which the Law alloweth no Plea or Answer.*

L O N D O N,

Printed in the Year, 1684.



TO THE
KINGS

Most Excellent *MAJESTY*, &c.

Great Sir,

I Have Advised with many Eminent Lawyers, upon the ensuing Treatise, who agree, The Statutes, Presidents and Book - Cases to be rightly quoted ; And I know the matter of Fact to be Truly Stated : Therefore humbly, and in all Duty, beg of Your Majesty to Read and Judge how my dear Lord, and I, have been misrepresented for promoting Your Service.

Your Majesties

Most Dutiful Subject,

Perdoux

THE NEW YORK

MAGAZINE OF THE WEST, &c.

OF THE

THE NEW YORK MAGAZINE OF THE WEST, &c.
has always upon the coming
of the new year, The
President and Vice-President to be
elected. And I know the
master of the ship. I have
seen him, and in the log of your
ship, to head and back now my
dear friend, and I have been
preparing for presenting your service.

Your friend

THE NEW YORK

THE NEW YORK



TO THE
High and Mighty Monarch
Charles II.

By the Grace of God KING of *England, &c.*

Most Gracious Sovereign,

Without Fines and Amercia-
ments, Your Majesty may
have many Laws, but no
Obedience to them: Many People, but
few Subjects. In this Age, men obey
rather for Fear of Punishment, than Love
of Vertue: Rewards and Punishments
are the two Wheelles, which make the great
Clock of the Kingdom go right: The one
keeps the people within the Circle of Obe-
dience; the other is the Golden Spur to
Glory, and all Noble Actions. The just

A 3 Rights

Rights and Liberties of the Crown; like Hippocrates Twyns, live and die together: Therefore Your Royal Progenitors, and their great Ministers, ever termed such as blasted these flowers Regiæ Majestatis homicida: Every Subject within your Majesties Dominions, at the Age of 18, is obliged to defend them: Officers more especially upon every Admission into Employments, to discover whatsoever they know or believe to be done or suffered to Your Majesties dishonour; Eclipsing Your Prerogative, or Deminution of Your Profits, which made me discover such things as I (being educated in the practice of the Law) knew to be actually committed and done: And your Majesties Council at Law, not only reported, that I deserved encouragement, and a Liberal reward for the good service performed by the Discovery thereof: But countenanced me therein, untill they themselves became

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became Judges, or perceived how displeasing it was to forego Pretended perquisites, innovated Practices and Fees; I have been at continual expence and trouble, besides the loss of my Practice, by this long contest ever since October 1674. Clyents being unwilling to imploy a reputed enemy to the Courts. I humbly beg of Your Majesty, that the Judges refusing to reform the **Abuses** discovered, in such manner as I propose, may not deprive me of Your Majesties Mercy and Bounty, seeing the discovery thereof is all that's required in this Case of

Your Majesties

Most Loyal and Dutiful Subject,

P. Brunskell,

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THE

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1880-1881

TABLE

For the purpose of showing the
relative importance of the
various branches of the
service, the following table
has been prepared.

(1)



THE
VINDICATION
OF
Mr. *Brunskel's* Discovery of
ABUSES,

And of his
Proposals to **Remedy** them.

S Heweth Abuse 1. That diverse Proceedings, whereon Your Majesties casual Revenues arise, are never recorded, because the head Officers, forsaking the old practice to record Proceedings, (before any thing be done thereon) take their own and Judges Fees upon signing thereof, & leave the Attorneys to
B record

record them, *when, & as* they please : whereby they often deceive your Majesty of your *Capias pro fine*, and put your Subjects to the trouble and charge to record divers Judgments upon Post-Rolls two or three Terms afterwards ; But if the Paper Copies be lost, as some have been, Your subjects lose their Debts thereby.

This may be prevented, if Your Majesties Surveyor, and his Deputies may have the signing of all Proceedings, for security of Your Majesties Profits, as the Officers have, for the security of their own & Judges Fees ; keeping in like manner a settled Office, in or near the Seal-Offices of every Court, for conveniency of Attorneys to repair unto.

Because the Surveyor is bound in point of interest, without the obligation of an Oath, to be true to your Majesties interest ; whereas the head Officers interest oppose your Majesties : Therefore, as Judges, and head Officers understanding Attorneys tricks, not trusting their own
Fees

Fees to be paid according to what the Attorneys and Practizers (in the voluntary performance of their Oaths and Duties) Record, ever subjected them to reasonable Methods, upon prudent Surmises, without formal Tryals and Convictions by Suits in Law or Equity, as fully appeareth by the Remembrances and Records of every Court. And the Judges frequently stop Suiters motions untill Affidavits be fyled, and Officers Fees paid: *Ergo* (being enjoyned by the Statute 18 *Ed.* 3. to do all reasonable things to procure your Majesties profits) They may subject the Officers to this Method, or reduce them to the first practice, as your Majesties Attorney General advised to be done for your Majesties interest; because it's impossible to know what Officers neglect, unless it be known what Officers ought to Record and Estreat.

2. Abuse, That Your Majesties Fines upon Judgments *quod capiat* in all Courts, amount at least

Capiat pro Fina
1000 l.
per ann.
num.

to 1000 *l. per annum*; but Officers (without any Grant or Warrant from your Majesties Royal Ancestor's or Treasurers) buy necessities for the Judges, and repair the Courts therewith, and detain part as Fees due to themselves, and render no accompt thereof into the *Exchequer*, as they ought to do: Also oppreis poor people, by running them to the Outlawry, & putting them to 3 or 4 *l.* charge in the *Common-Pleas*, where your Majesties Fine is but 6 *s.* 8 *d.* And to 10 *l.* charges in the *Kings-Bench*, being forc'd to appear personally, whereby your Subjects pay ten times more than your Majesties duty.

This may be prevented, if Officers account in and receive a Warrant from the *Exchequer* for their Allowances, as other Accomptants do: And if Officers discretionarily tax, or add to the Suitors Costs, so much as the Fine upon the Judgment *quod Capiarur* doth amount unto; and take a *Memorandum* from the Attorney, to take care to see the same paid when

when the Costs are levied, as the Officers used to do for their own damage clear ; because Costs, by the Statute 23 *Hen. 8.* Chap. 15. may be taxed more or less discretio- narily, as they please: and by this means your Subjects will be free from paying more than the duty. The present Lord Keeper, by a Deriva- tive Power from your Majesty, grant- eth relief even where the Laws are deficient: And the Statute 18 *Ed. 3* (now in force) enjoyneth his Lord- ship and all the Judges to do all rea- sonable things to procure your Pro- fits: And the Statute 13 *Ed. 1.* cap. 50. provideth where the Law faileth of a remedy, it may be supplied by your Majesties writ: *Ergo*, your Maje- sty wants not equitable or legal means to secure your Fines, with ease and relief to your Subjects, as proposed.

3. Abuse, That Officers and Clarks, for Bribes and Rewards, withdraw Issues of Jurors, which in *England* and *Wales* amount unto 8000 *l. per* Issues of Jurors
 B 3 *annum*; 8000. *l.*

annum; whereby Juries are supplied with indigent Free-holders, *de circumstantibus*, which Under-Sheriffs or Bailiffs, at the instance of their corrupt Clients, may have packt: there being little or no time to enquire of their Credit, so as to challenge them; which occasioneth corrupt Verdicts: And vexatious Plaintiffs frequently make Defendants dance attendance two or three Assizes, to draw them to comply with their demands; whereby the Gentlemen at first impannell'd being still return'd as Jurors, are forced to the trouble and charge to attend old Causes.

This may be prevented, if Officers to whom it belongs record all the Judges Orders, as well general as particular, distinctly, in a Book, or Parchment-Roll; then the Officer or Clark withdrawing Issues without the Judges directions, may be easily discovered and convicted: And if Under-Sheriffs return Free-holders to serve in their turns; then Gentle-
men

men in all or most Counties will not be returned above once in three or four years, nor be forced to attend old Causes. This will make Gentlemen willing to be Jury-men: And if your Maiesty have not many Forfeitures, your Subjects will be endeared with good Juries; *Ergo*, Reasonable.

4. Abuse, That penalties upon Actions-popular, and Informations, amount at least to 10000 *l.* per an. and the Suits ought not to abate, without your Majesty or Judges privacy; to the end, that the wilful Breakers, or Non-observers of the Laws, or the malicious Informers or Prosecutors, giving your peaceable Subjects disturbance, without just cause, may be punished: But at this day due care is not * taken to record

Forfeitures or Penalties upon Actions popular, & Informations, 10000. *l.*

* Note. The Prothonotary *Robinson* confessed this Abuse was true; yet

the Judges of the *Kings-Bench*, & Barons of Your *Exchequer*, never made any Order to reform it. *Ergo*, if Confession, which is accounted as good as 10000 Witnesses, produce no better Effects, What can be hoped upon the Evidence of one or two Witnesses at chargeable Tryals at Law?

Plaintiffs Names in Actions-Popular, and Informations, before Process for the Arrest issue out, whereby litigious persons may sue whom they please, and by Instruments under-hand get what they can by private agreements, and the Defendants are liable to be sued *ad infinitum* upon the same account, until the Action or Information be recorded; and by the Officers neglect to file Informations, any person confederating with the Criminals, may foist in an antedated Information, and plead it in bar to the real Prosecutors, whereby your Majesty loseth your share of your Penaltie; and Criminals, upon breach of penal Statutes, escape unpunished; and your peaceable Subjects, being harrassed between Officers and malicious Informers, or Prosecutors, (for want of a Record) cannot be relieved.

This may be prevented by ordering Officers to observe the Statute 18 *Eliz.* cap. 5. (now in force) enjoining them to record Informations

tions before the Process for the Arrest issue out; and that Plaintiffs Names in Actions-Popular may be recorded in a Book, or Parchment-Roll, for that purpose, before the Process issue out; and that the like Orders may be made in the *Kings-Bench* and *Exchequer*, as are made in the *Common-Pleas*, to prevent the imbezlement of *Postea's*.

5. *Abuse*, That Fines and Amerciaments are never recorded and prosecuted, unless your agrieved Subjects, oppress'd with the artifices of Under-Sheriffs, Bailiffs, and Attorneys, add to their own misery, by seeing the head Officers to do it; because the Officers Fees increase by delatory returns, and Contempts, which multiply Proceedings, Orders, Motions, and Continuances, which encourageth vexatious Defendants to withstand just Debts, by suggesting a feigned equity, and pleading fictitiously to keep the Plaintiffs in suspense three or four years with their
own

own Money; so force them to an easie Composition at last: Also vexatious Plaintiffs are thereby encouraged to be very litigious, keeping Defendants from an Equitable Relief two or three years with Contempts, until they swell to Commissions of Rebellion: Because the agrieved subjects, who have no part of any Fines inflicted, cannot have them prosecuted, nor make their grievances particularly known to the Judges, without great charge and trouble of making Affidavits, Soliciting, Feeing Councel, and Attorneys: And the worst Actions admitting plausible excuses, it is easy for Officers to escape Unpunished; which makes Your subjects sit down under great Oppressions, rather than be at that great Expence and Trouble to hunt after an uncertain Relief. Sir *Philip Mountain*, High Sheriff of *Torkshire*, experienced it, when he prosecuted *Mr. Benson* (the Clark of Assizes) for Extortion, & *experientia docet sed nocet*. Its not the Offending, but the Offended

Offended and grieved Subjects that are punished: As for instance, when the first *Habeas Corpus* is disobey'd, the parties grieved pay to the Judges and Officers for every *alias & plures* 10 s. besides 20 or 30 s. to Councilors and Attorneys, for Fees, Motions, and Orders; and Under-Sheriffs (or Jaylors farming the Jayles of them) prey upon Prisoners with Diet and Lodgings: Whereas, if a good round Fine were set upon the first Contempt, (though afterwards, upon reasonable cause, remitted or mitigated) the Offenders will then be punished, and the agrieved Subjects freed from that expence, and the Fines and Amerciaments so inflicted upon every Contempt of Rules, Orders, and Process, will amount to 20000 l. *per annum*, or Officers to avoid them, will expedite Suits; so that Your subjects ease & relief will tant-amount what the Profits may fall short thereof; and by the ancient course of Courts, Sheriffs were ever fined as the Law directeth for the

De-

Con-
tempts
20000 l.

Defendants non-appearance : For that reason the Statute 23 *Hen. 6.* cap. 10. impowereth Sheriffs to take Bail-Bond to indemnifie themselves from your Majesties Fines ; which sheweth, That such Bonds ought not to be sued, until Sheriffs be actually damnified ; and that the Action ought to abate when Sheriffs are reimbursed ; but Officers and Attorneys, to increase their own profits, by projected Contrivances, see Under-Sheriffs, (& indemnifie them from your Majesties Fine) to assign over such Bonds to Plaintiffs, to sue, whereby they not only deceive your Majesty of your Fines, but wrongfully harrafs your Subjects upon their Bonds, because they can only plead to stave off Proceedings thereon ; until they can move the Judges for relief ; who never grant any, without making them pay all the Officers Fees, and *Plaintiffs* Charges, occasioned by suing such Bonds ; also making them give Bail to the Original Action, though the demand be large

large and fictitious: so that the great expence and trouble of seeing Counsel, Attorneys moving the Courts, and the difficulty; when all is done, to find Bail to the Original Action, especially if they live remote from *London*, forceth poor People to disadvantageous agreements: And Ejectments are practised instead of Formedons; yet the Declarations are not compounded in the Alienation Office, or such Fines paid thereon, as were usually paid upon Formedons: And by the Statute 9 *Hen. 3.* cap. 11. Common Pleas shall not follow the King: *Ergo*, the Kings Bench may be prohibited to medle therein: And the Exchequer is prohibited by the Statute 10 *Edward 1.* and 28 *Edward 1.* cap. 4. to hold Common-Pleas. The Learned Lord Chief Baron *Hailes* endeavoured to overrule one *Nosworthy's* Plea, when he pleaded that Statute in Bar, or by way of Estopple, to an Action commenced in that Court: Yet after

a long Debate, the Plea was allowed, and your Majesty ought to have a full Duty upon every Original Writ in Debt, viz. 10^s. per Cent. (as a License to sue) and a duty of 6^d. for the Seal of every Original. But the Courts of Kings-Bench and Exchequer have robbed the Common Pleas of much business, & seldom or never proceed by Original Writs. The Judges formerly were so tender of your Majesties Profits in performance of their Oaths, That in the Earl of *Devenshires* Case, 4 *Jacobi*, they resolved them to be *Ornamenta pacis* & *armamenta belli*, and of so high estimation, that every body is bound to promote them: For that reason they Fined and Imprisoned Officers upon their first appearance, as appears by *Jeromes* Case, who was Fined and Imprisoned for withdrawing one Original Writ. But the Judges and Officers lately contrived an *Ac Etiam Bill*, in the Common Pleas, whereby Plaintiffs may be encouraged to com-
mence

mence many Suits, to increase Officers Fees and Perquisites, because they (notwithstanding the Statute 13 Car. 2. Statute 2. cap. 2.) may lay their demands as high and vexatiously as they please, to squeeze advantagious agreements out of Defendants upon Arrests, and deceive your Majesty of the Fine or Duty amounting to 1000^l. per annum, which was ever paid before Process for the arrest issued out, according to the first demands; and hindred Plaintiffs, to oppress Defendants by holding them to unreasonable Bail, by exceeding their real cause of Actions, as now. And whereas, to excuse their contrivance of *Ac Etiam Bill*, it was alledg'd before your Majesty, at the hearing, *That the Moiety of all Fines upon Originals, belonged of Right to the present Lord Keeper, and the Master of the Rolls, for Diet and Board-wages, because they and their Predecessors ever enjoy'd them.* This allegation may be presumed to be a great mistake, For amongst all the things

Fines upon Originals.
1000^l.

things granted or allowed to them, or their Predecessors, there is not the least mention of these Fines; and the Judges have resolved, in the Earl of Devonshire's Case, *That a long Enjoyment, by force of general words in Letters-Patents, cannot create a Right in Law to any Profits of the Crown.* Also the Statute 1 Hen. 4. cap. 6. provideth, *That nothing shall pass out of the Crown, without it be expressly named and granted.* And it's well known, that the late Lord Keepers and Chancellors have other and greater Sallaries and allowances, particularly granted by your Majesties Royal Father and Grandfather, then their Predecessors ever enjoyed; and Qu. Elizabeth granted, and King James confirmed, a Moiety of all Fines upon Originals to the Cursitors in Fee; Ergo, Your Majesty hath a Right to take or grant the other Moiety.

This may be prevented, if head Officers in every Court, to whom it belongs, keep an exact Bill of Pleas,

Pleas, and record all Contempts therein as soon as committed, and set the Fines and Amerciaments presently, taking it *pro confesso*, if the person or Officer offending, at the day given, or before, do not appear, & discharge himself that he is guilty, Your Majesty may lay Your old duties upon the original Process now used: or reduce the Courts to their first Establishments, seeing the Judges and Officers forego not their own Fees, and persons holding Tolls and Franchises by grants from the Crown, permit no Encroachments: And all Loyal and Ingenious Subjects know that Your Crown cannot be supported without Royal aids or duties, which must Issue out of real or personal Estates, Trade, Proceedings at Law, or Offices: And when your old duties fall short to defray Your necessities, it forces Your Majesty to ask new Supplies, wherewith all Your subjects are generally Taxed; For that reason, when it was perceived, That the Crown was deceived of

a duty by projected Recoveries, It was Enacted by the Statute 32 *Hen.* 8. cap 1. that Writs of Entry, shall pay as much as Writs of Covenant in Chancery.

Fines before Jus-
tices in
Eyre,
Commissioners of
Sewers, &
Clarks of
the Mar-
kets,
1000 l.
Amercia-
ments in
Turns &
Leets.
1000 l.

9. Abuse, That Fines and Amerciaments, set by Justices in Eyre, Commissioners of Sewers, and Clarks of the Markets, are not estreated, which amount to 1000 *l. per annum*; also, Amerciaments in Sheriffs Turns and Leets, amount to 1000 *l. per annum* at least; there being at least 600 Hundreds in *England* and *Wales*, besides many Mannors wherein Courts are holden twice a year, and all the Amerciaments not granted away, belong to your Majesty; yet due care is not taken thereof, as the Statute 14 *Rich.* 2. cap 11. and 11 *Hen.* 7. cap 15. direct, which the Attorney-General hath reported ought to be observed; and Bailiffs of Liberties observe it not, tho enjoyned *to do all things required of Sheriffs*, by force of the Statute, 27 *Hen.* 8. cap 24.

This

This may be prevented, by charging the Justices in Eyre, and Commissioners of Sewers, to take care of their Clarks; also by charging the Clarks of the Markets to Estreat all Fines and Amerciaments into the *Exchequer*: And if Amerciaments in Turns and Leets be estreated, and returned to the Sessions, as the Statute 11 H. 7. cap. 15. doth direct, Duplicates may be returned from thence to the *Exchequer*, to charge Accomptants therewith; Your subjects presuming to have a Right of Common, or the like, not worth 2 *d.* will be at expensive Suits to preserve their Rights, *a multo fortiori*, your Majesty may preserve yours, because these Fines and Amerciaments being contingent things, may happen at one time or other to be very considerable in all Courts throughout the Kingdom; and all Stewards and Clarks of the Peace are enjoyned by Oath and Duty to do as the Statute directeth; and Your subjects Rights and Liberties cannot be injur'd by adjusting

your Majesties Rights; *Ergo*, Reasonable.

7. *Abuse*. That the Officers of the *Exchequer* (disobeying the Barons Orders) permit Under-Sheriffs to take their Bailiffs Returns and Accompts, *de bene esse*, and pass them as true in the *Exchequer*; whereby Wages are allowed for the Clerks of the Peace, as Servants to the Justices not attending at Assizes or Sessions, whereas they are no Servants within the meaning of the Statute 14 *Rich. 2.* to whom Wages ought to be allowed; and there being two Thousand Justices of the Peace in *England* and *Wales*; a fourth part may be modestly reckoned not to attend at one and the same time; whose Wages, computing the Petit and grand Sessions, and Assizes in every County, one with another, at 4 s. *per diem*, and 2 s. for their Men, for every days non-attendance, amount to 3000 l. *per annum*, and upwards, whereof your Majesty is wrong.

Allowances for Justices wages sav'd, 3000 l.

wronged, and the Justice get not a farthing.

This may be prevented, if wages be not allowed upon Under-Sheriffs Accompts to Clerks of the Peace, deputed by the *Custos Rotulorum*, or any other, as Servants to any Justices of the Peace, unless the Justices themselves do attend at the Assizes and Sessions, as the Statute 14 *Rich. 2.* cap. 11. doth direct; and that the Bailiffs, or others, who pay the Justices Wages, may attest his or their accompts upon Oath, before a Magistrate appointed to take *Affidavits*, particularly shewing what they pay, and to whom, that Under-Sheriffs may produce the same to accompt by in the *Exchequer*, as the Barons have ordered; because the Under-Sheriffs swearing their Bailiffs returns to be true, for ought they know, signifies nothing; for that reason divers Under-Sheriffs formerly passed their accompts by *Proxies*.

8. Abuse, That the *Nomina Villar*⁹, whereby the Boundaries of Liberties are now adjusted, were taken at first upon the Information of Under-Sheriffs, who received the same from their Bailiffs *de bene esse*, without further Enquiry thereinto.

To prevent this, Sheriffs for the future may take Indentures of Bailiffs of Liberties, to execute all Process, as the Statute 12 *Edw. 2.* chap. 5. doth direct, and return such as particularly relate to your Majesties casual Profits, into the Court of *Exchequer*, that Officers may know on whom to place the accompt thereof; also, that the Boundaries, or extent of Liberties, may be diligently inquired into, and ascertained by the Verdicts of substantial Juries, to be made good matter upon Record for the future: For as private Lords and Parishes yearly surround their Boundaries to prevent encroachments, *a multo fortiori*, your Majesties ought to be enquired into, and

and ascertained by good matter upon Record.

9. *Abuse*, That the Recognizances of solvent persons, generally compounded and withdrawn, amount unto as much or more than such as be estreated; and the Recognizances which are now estreated, amounting to 100000 *l. per annum*, would be likewise compounded or withdrawn, if the poor people were able to satisfy the Officers demands, for the *Clerks of the Peace* seldom take less than 16 *s. Clerks of the Assize* 3 or 4 *l.* and Officers of the *Exchequer* 7 or 8 *l.* (whose Fees exceed not 3 *l.*) to discharge persons admitted to compound; whereby poor people being admitted to compound Penalties of 40 *l.* (due to your Majesty,) for 2 *d.* (not being freed from Officers excessive Fees, and the great charge and trouble of formal Pleadings, Motions, suing out *Quietus*, and the like) are deterred from applying to your Majesties Courts for

Forfeited
Recogni-
zances
certified,
100000*l.*
Forfeited
Recogni-
zances
not cer-
tified,
100000*l.*

C 4 mercy,

mercy, and forced under-hand to bribe Under-Sheriffs and Bailiffs, who prey upon their necessities, with respits and false Returns, until they insensibly become insolvent, and bring themselves and Families to be

* *Note*, These things make Offices sell at great rates, but the Wise Lord Keeper *Bacon* termes them *the sick State of the Exchequer*, and cautions Sir *John Denham* upon admitting him to be a Baron of the *Exchequer*, to provide against them.

maintained at the Parish-charge: * Thus Officers acquit your solvent Subjects, and clog your Majesties *Exchequer* with the Recognizances of the poor people, who are

willing to pay what they are able, but not able to pay so much as the Officers demand; and the Law consisting but of two parts, *viz. Judicial* and *Executive*, and most Offences beingailable, Criminals are at their own Elections, whether they will stand Tryal, or forfeit their Recognizances; and the Judges being fully employed in Judicial matters cannot take notice of every thing, transacted by Officers; and being ignorant of the *Executive* part,
gene-

generally take the advice of the Protho-Notaries, or head Officers, therein ; so that the Execution, which is the life of the Law, depends chiefly upon the skill and honesty of Officers ; which makes rich Offenders, who have money at will, very insolent, and discourage your peaceable Subjects to prosecute and convict them : And the general Grievances of your Subjects consisting in Purpessures, common Nufances, defective Bridges, Causeways and common Pounds, Land Mark removed, Hedge Breakers, Riots, Assaults, common Barretors, Eves droppers, Inn or Alehouses Lodging persons of ill Fame, Regrators, Forestallers, Bakers or Brewers failing in Assize of Bread or Bear, False Weights and Measures, Cattle Infected, put into common Pastures, and the like, cannot be redressed while Recognizances are withdrawn, and Criminals discharged upon easie Compositions without hearing what's to be said in your Majesties behalf. As for example,

Mary

Mary Hunt and her Bail (being bound and indebted to your Majesty in the sum of 1400 *l.* by several Recognizances, to stand Tryal of divers Crimes wherewith she was charged) confessed it cost her 400 *l.* and upwards, to Officers for withdrawing her Recognizances to hinder the Prosecutors, to expose her by open Tryals to publick Justice: And it's a violent presumption that Officers used indirect practices to gratifie her therein, because in disobedience of expresse Rules of Court, and in Contempt of the Statutes 5 *Hen.* 3. 7 *Hen.* 4. *cap.* 3. and 2 *Hen.* 6. *cap.* 10. (after they had received divers Fees of the Prosecutor to Estreat them into the *Exchequer*) did not Estreat any, save one to try an Indictment in *Michaelmas* Term 1682. which they knew would be (as it is) discharged of course: Two Recognizances (to try Indictments for keeping a publick House, and entertaining Lewd and Debauch'd persons; after the Fact confessed,

sed, to avoid the Tryal) were discharged by a single Judge at's Chamber privately for 3 s. 4 d. a piece: Another to keep the Peace, being forfeited by her wilful breach thereof, was particularly ordered to be Estreated after *Hunts* death: Because the Bail confessed they had 100 l. a piece in their hands to Indemnifie themselves: Yet the Bail are since discharged by Rule of Court without paying the Money in their Hands to your Majesty, or hearing what the Prosecutors had to say: Whereas in all matters relating to private persons, the adverse parties ever have a day given to shew Cause before any thing be peremptorily ordered: These practices made *Hunt* so insolent, that boasting of her prevalency with Officers, she Spit in the Prosecutors Face; hired persons to Murder her, and threatned to Burn her House: And the Officers and Bail aggravating her Grievances by Infamous Misrepresentations and other Affronts, she moved the Court
to

to have the premises duly examined; but was committed to Prison.

To prevent these Abuses, the Clerks of Assizes and Peace, may enter all Recognizances in a Book, or Parchment Roll, as soon as they come to their hands; and not keep them, as now, upon loose Files: that poor people, through inadvertency forfeiting Recognizances, or incurring other great Penalties, (if their Case appear, upon Petition and Proof, to deserve mercy) may be discharged by an Order of Court without more ado; or an Office may be erected to compound such Forfeitures, in nature of the *Alienation-Office*. Tis for your Majesties honour and profit to give Your subjects (who ought to have mercy shewn) a legall and cheap way to obtain it; because it endeareth them to your Majesty, and hindereth all indirect application to Officers.

10. Abuse, That the Statute
51 Hen. 3. limiteth and appointeth
all

all Sheriffs (except *Northumberland*, and others, by particular Statutes exempted) to pay your Majesties Fines half yearly, viz. at *Easter* and *Michaelmas*, and the Proceſs of the *Exchequer* for that purpose are iſſued out after every *Hillary* and *Trinity* Terms; yet Officers generally reſpite the Under-Sheriffs firſt half-years Payment until *Trinity*-Vacation, and often longer; and if High-Sheriffs happen to die, (as Sir *Solomon Swaile* did, who was High-Sheriff of *Torkſhire*) your Maſteſty may long want your Fines, and loſe them at laſt; and if Under Sheriffs ſhould die before their Accompts be perfected, the High-Sheriffs, who are the Accomptants in point of Law, would be at a great loſs; *Ergo*, It's neither for your Maſteſty, nor High-Sheriffs Intereſt, to have the Accompts ſo generally reſpited.

To prevent this, the Statute may be obſerved by all Sheriffs, excepting the Sheriffs of *Northumberland*, or ſuch as are particularly exempted,

Eccle-
siastical
Fines,
6000 l.
per an-
num.

11. *Abuse*, That Fines in all Ecclesiastical Courts throughout the Kingdom, may be modestly computed to be 6000 l. *per Annum*, and were duly collected and paid into the *Exchequer* by particular Receivers thereof, as appears by the Patent-Rolls and Records down to the late Rebellion: But since your Majesties Happy Restauration, only a few Fines upon Excommunications are certified into the *Exchequer*, all the rest are Concealed.

To prevent this, the Officers may be subjected to such Orders as are proposed for the Officers of other Courts.

The Reports and Opinions of your Majesties Judges, Attorney Generals, and other able Lawyers, *pro* and *con*, Statutes, Presidents, and Resolutions of former Judges, as follow, plainly shew the foregoing *Abuses* to be true, and may be *Remedied* as *Proposed*.

Sir Francis North
reports.

Sir Francis North, your Majesties Attorney General, about October 1674
of

of his own knowledge, Reported, That the small Fines and Amerciaments in all Courts, are wholly Neglected; which if carefully looked after, will be of a considerable Value: And the said Brunskel, if Your Majesty please to favour him, deserveth an Employment therein, for so Useful a Discovery. And his Lordship declared, That he was glad of the Opportunity so to Report: Because he had often Moved the Judges to take Care of them. Yet when elected Chief Justice of the Common Pleas, refused to draw either Patent or Commission for the said Brunskel, pursuant to his own Report. And when his Officers claimed some Fines as Fees to Buy Necessaries for the Judges, and Repair the Courts; It was Referred to Sir Charles Harboard, who Reported, after a serious Debate with his Lordship and Officers, That all Fines were Agreed to be Due to Your Majesty: Ergo, Not applicable to any Use without Your Majesties express Warrant. Then his Lordship yeilded by a second

Sir Charles
Har-
board.

Sir Francis North's
Opinion.

cond Opinion under his hand; *That it was Needful to Appoint a Person, who, by taking the Officers Accompts, might Controul such as pocket His Majesties Profits.* And Serjeant Maynard

Mr. Saunders.

gave his Opinion in private for the said *Brunskel*, in behalf of Your Majesty; Yet when he appeared in publick, and saw the Judges and Officers against him, Retracted the same. And Mr. *Saunders* ever pleaded for the said *Brunskel* in behalf of Your Majesty, and maintained the *Green-Wax* Fines to be Your Ancient Revenue: And that Your Majesty may Legally Grant it in Farm, or settle Orders or Rules for the Management thereof as Proposed; Yet being Chief Justice, alledged, *It was one thing to be Judge, and another to be Counsel.*

Reymond.

Sir William Jones.

And Serjeant *Reymond* gave his Opinion for the said *Brunskel* in behalf of Your Majesty; But being a Judge, satt mute. Sir *William Jones*, Your Majesties Attorney General, ever refused to say or do any thing in Favour of the said *Brunskel*: But a Scheam of

Abuses

Abuses and Remedies (which the said *Brunskell* gave to some Persons active in the revocation of his Patent, to let them see what reasonable things he desired and was denyed: And how unjustly his Adversaries sought to ruine his Reputation and Estate, being carried to the said Sir *William Jones* by his own Creatures, without discovering the said *Brunskell* to be the Author thereof, he reported thereon: That many of the **Abuses are True, and fit to be Redressed**: That all, or the greatest part thereof may be redressed by the Judges Orders in the respective Courts; That the discoveror thereof deserveth all due Encouragement, for the service he hath already done, and may for the future do, in discovering these or the like **Abuses**; Also, the assurance of a liberal Reward: And the Judges confirmed his Report, by acquainting the Lords Commissioners of your Majesties Treasury: That they had made Orders pursuant therunto: Also the

His reports.

D Barons,

Barons, by agreeing to make Orders accordingly, as appears by the minute Book in the Treasury Chamber: Yet effectual Orders are not made: And when the said *Brunskell* appeared and Petitioned for his Reward pursuant thereto, being referred to the said Sir *William Jones*, and afterwards to Mr. *Finch* the Solicitor General, they refused to draw either Patent or Commission for him. Sir *Robert Sawyer* before and after he was Your Majesties Attorney General, pleaded upon several occasions for the said *Brunskell* in behalf of your Majesty, and Reported, *That great Abuses are practiced by Clerks; and it's fit such Rules be made, that your Majesty may not be injured: That the Ancient Practice is best: That the Method as the Statute 11 Hen. 7. cap. 15. directeth, ought to be pursued: That the Orders proposed, seem reasonable in the main: And advised the Lords Commissioners of Your Treasury, to send them to the Judges to be made Rules in*

Sir Robert
Sawyers
reports.

the

the respective Courts, which their Lordships did accordingly; and your Majesty Commanded the Earl of *Anglesey* to see them made for Your Service. Whereupon the Judges appointed to meet at his Lordships House: But for some reasons best known to themselves, They not only declined meeting there, but to have his Lordship present at the debate thereof in *Serjeants-Inn-Hall*; where the Late Lord Chief Justice *Pemberton* declared: *That your Majesty had no such Revenue*, and dismissed the said *Brunskell* from all further Solicitations for Rules: Whereupon the Earl of *Anglesey* stated the **Abuses**, represented by way of Question under his hand, and delivered them, by your Majesties Command, to Sir *Leoline Jenkins* your Majesties Principal Secretary, to be referred to the Judges, to Answer under their Hands, which is not yet done: Yet the said Sir *Robert Sawyer* forgetting his former Reports and Opinions, acquainted your Majesty at the hearing,

Pemberton.

Sir Robert Sawyer's retractions.

ing, that the said *Brunskell* was impertinently troublesome: And reported lately, upon the said *Brunskells* petition to the Lords Commissioners of your Majesties Treasury, That the substance of what the said *Brunskell* insists on, hath been debated over and over, and will never be determined to the said *Brunskells* satisfaction; yet warily submits to their Lordships Judgment; For he knew, that their Lordships were as sensible as himself, that repeating nine Years Transactions, Stating and Answering all Objections, made the said *Brunskells* Case unavoidably long; and for that reason it was not Read: *Ergo*, not Debated.

That Fines and Penalties were Originally ordained to quicken the Execution (which is the life) of the Law, and established to defray the charge which your Majesty is at with your Courts for Administration of Justice and Equity to Your Subjects: For that reason 'tis provided by the Statute 51 *Hen. 3.* and

7 *Hen. 4. cap. 3.* That they shall be
 duely Recorded, Estreated, Levied,
 and Accompted for : The Statute
 6 *Edw. 1. cap. 14.* directeth, That the
 Treasurers and Barons shall see Amer-
 ciaments Levied to your Majesties use.
 The Statute of *Rutland 10 Edw. 1.*
 provideth, That Sheriffs and Bayliffs
 shall not withdraw Your Revenues,
 by returning Nichills, or the like : And
 that Your Treasurers and Barons
 cause particular Rolls of Estreats to
 be made and delivered to faithfull
 and circumspect men, to Enquire
 thereinto. The Statute 27 *Edw. 1.* di-
 recteth, That once every year a Ba-
 ron and a Clark shall go round the
 Countries, to enquire whether any
 be concealed or withdrawn : The
 Statute 18 *Edw. 3.* enjoyneth the
 Judges to do all reasonable things to
 procure them. By the Statute 6 *Hen. 4.*
cap. 3. Commissions shall be issued
 out after every Officers final ac-
 compt, into the respective Counties
 where the Officers and Accomptants
 live, to enquire of Frauds, that they

may be severely punished. And Under-Sheriffs and Bayliffs by the Statute 1 *Hen. 5.* cap. 4. shall not be in Office above a year. The Statute 2 *Hen. 6.* cap. 10. provideth, That persons shall be appointed in all Courts faithfully to attend your Majesties business.

And the Statute 33 *Hen. 8.* cap. 39. provideth, That the Officers concealing or withdrawing your Majesties Fines, shall pay three times the value, and forfeit their Offices: And it was found by experience, as appeareth by the said Statute 27 *Hen. 8.* That Suits were delayed, when Bailiffs were not punished by Fines and Amerciaments, because the Lords of Liberties to whom your Royal Ancestors had granted the Return of Writs, had power to remit the same; Therefore the Statute nulled those Grants, and restored the Fines to the Crown, as the ancient Estate and Prerogative thereof for administring Justice: and the Statute 27 *Hen. 8.* cap. 10. & 13.

Eliz.

Eliz. cap. 5. prohibiteth all Contrivances to deceive your Majesty of any Fines; and all persons (Officers especially) are punishable for Frauds & Deceits by the Statute 3 *Ed. 1. cap. 29.* And every Subject by the Statute 7 *Jacobi cap. 6.* is obliged by Oath and Duty, at the Age of 18. to defend the Rights of the Crown. And Great Ministers and Officers not only to take that Oath, but upon every admission into any Office or Employment, more particularly Sworn as followeth.

Bishops are particularly to assist and defend all Jurisdictions, Priviledges, Prebeminences, and Authorities Granted, Belonging, United or Annexed to the Crown, &c.

Bishops
Oaths;

The Lord Chancellor is truely to Counsel your Majesty, and not to know or suffer the Hurt or Disherison of your Majesty, nor the Rights of the Crown to be in any stress: And if he cannot hinder it, He is to make it expresly known to your Majesty, with his true Advice, and Counsell, and to do and purchase

Lord
Chancel-
lors.

*Your Majesties profits in all things,
&c.*

Privy
Councel-
lors.

Privy Councillors, if they know of any thing attempted, done, or spoken against your Majesties Person, Honour, Crown, or Dignity Royal; are to withstand it to the utmost of their power, and to advertise your Majesty thereof, and to assist and defend all Jurisdictions, as in the Bishops Oath, &c.

Treasu-
rers,
Chancel-
lors, and
Barons
Oaths.

The Treasurers, Chancellor, and Barons of the Exchequer, are not to disturb nor respite Debts where they may be Levied, to take Fee or Robe of none but your Majesty; and where they understand of any wrong or prejudice done to your Majesty; they are to use their power and diligence to redress it: And if they cannot, they are to inform your Majesty, &c.

Judges
Oath.

Judges are to Counsel your Majesty in Tour needs; and not to Counsel or Assent to any thing which may turn to your Majesties hurt or disberison: They are to do even right to Poor and Rich, and not take privily or apart any gifts, or any other thing which may turn to their

their own profits; nor Fees or Robes of any but your Majesty: They are to do and procure your Majesties profits in all things where they may reasonably do it; And upon default in any point, shall be at your Majesties will of Body, Lands, and Honour, &c.

Justices of the Peace are truly to cause ^{Justices of Peace.} all Issues, Fines, and Amerciaments before them, to be entred without concealing or imbezeling any, and truly to send them into the Exchequer; they shall not Let for gift or other Cause; but are well and truly to do their Office.

High-Sheriffs are not to assent to the Concealment of your Majesties ^{High-Sheriffs.} Rights, or of Tour Franchises; and wherever they know of any thing concealed or withdrawn, they are to cause it to be restored, or certify your Majesty thereof: They are not to respite your Majesties debts for any gift: They are truly to acquit at the Exchequer all those of whom they receive any thing of your Majesties debts; and truly to return, and serve all your Majesties Writs, and admit none to be
their

their Under-Sheriffs or Clerks of the last year ; and shall make each of their Bayliffs to take such Oath as they take ; and shall not let their Sheriff-wick or any Balywick thereof to Farm.

Lawyers, Officers, and Attorneys are sworn to assist and defend the Crown ; To do no falshood, nor consent to any to be done to your Majesties prejudice ; But if they know of any, they are to give notice to the Lord Chief Justice, or his Brethren, that it may be Reformed ; and the Prothonotaries, Clerks of Estreats, and Philazers are truly and diligently to Record and Extract all Fines, Issues, and Amerciaments ; and to inform the Chief Justice, if they know of any thing neglected, concealed, or withdrawn.

And the experience of former Ages teacheth, by the exemplary punishment .of divers Judges, by Death, Fines, Imprisonment and Banishment, when they had Fees as well as their Officers, which increased, or decreased, as Suits were delayed, and Proceedings multiplyed ; and took
New-

New-Years Gifts, and Money for Offices; they did not put the Laws, in execution against Officers: Therefore the Statutes 18 and 20 *Ed. 3.* and 12 *R. 2.* And other good Laws were made and provided, still in force, to prevent corruption; *Because Justice is to be done without respect of persons; Et nemo debet esse sapientiores Legibus.* And in the Earl of Devonshires Case, 4 *Jacobi*, the Profits of the Crown are resolved to be *Ornamenta Pacis, & Firmamenta Belli*; and of so high estimation, that every body is bound to promote them: Also, resolved in *Vaughan's Case*, 39 and 40. *Eliz.* That a Fine or Amerciament is due to your Majesty upon every Contempt or Disobedience of Writs or Process: Therefore Judgments were set aside, for omitting to record persons *in misericordia*; and the very small Amerciaments were duly estreated, as appears by *Rastall's new Natura Brevis*, under the title of *Amerciaments*, *Beecher's Case* in *Cooke's Reports*; and

and Original Writs at this day command pledges to be taken for them: and the Citizens of *London* (farming the *Green-Wax-Fines* of your Majesty in the City by a Derivative Power) ever took the small Amerciaments: which your Majesties Officers neglect, who enjoy divers Fees & Perquisites out of every Warrant of Attorney, and other things, exceeding 200. *per an.* to take care thereof; & if persons were compell'd to find real pledges, as the Law directs, and Amerciaments were truly estreated, *ad finem litis*, it would prevent frivolous Suits, and fictitious Pleadings, to delay Suitors; for Amerciaments have been affeer'd upon litigious Plaintiffs or Defendants, to 20 *l.* by Neighbours, who best knew the Parties and their Offences, by the Statute 9 *Hen. 3.* cap. 14. And it's well known, that Fines inflicted fall not upon High-Sheriffs, as pretended, but upon their Under-Sheriffs, Bailiffs, or litigious Clients, who must and will rather pay them, than forfeit the penalties of

of their Bonds, because all High-Sheriffs ever take great and good Security, to indemnifie themselves. For that reason the Statute 7 *Edw.* 6. cap. 1. provideth, That head Officers in every Court, shall impose Fines upon, and Amerce Under-Sheriffs or accomptants for not accompting or returning Process duely at the times appointed: And the Statute 22 and 23. of your Majesties Reign, cap. 22. declareth Officers guilty of many Abusive and Sinister practises in withdrawing your Majesties Fines and Forfeitures. And the Statute 31 of your Majesties Raigh, cap. 2. declareth, That Under-Sheriffs, Jaylors and Officers use many shifts to increase their Fees, contrary to their Oaths & Duties, and the known Laws of the Land: That the Statute 23 *Hen.* 6. cap. 10. to eschew Extortion, Perjury, and Oppression, prohibiteth Officers to be Jury-Men, as not to be credited.

King *Henry* the third being informed of **Abuses** in this Revenue, sub-
jected

* Spelman's
Glossary.

* Rotl.
Paten' 55
and 56.
Hen. 3.

* Inter
Record.
apud Re-
cept.
Scaccarii
4 Edw. 1.

jected the Sheriffs to good Orders; and punished *Hubert de Burgh*, his Chief-Justice, for neglect of this Revenue; * And when he assigned over his Revenues for payment of his Debts, reserved but these Branches of his *Green-wax-Fines* for his own subsistence. * King *Edward* the first allotted his Judges Salaries to be paid thereout, to make them careful of it: the Parliament esteeming Fines the only means to expedite Justice, petitioned *Richard* the second, That the Justices might have part of all Fines and Penalties, to excite them to inflict and levy them; whereupon the Statutes 12 *Rich.* 2. cap. 10. and 14 cap. 11. were made for their Wages to be paid thereout, still in force, and observed. And it appears by *Crompton's Jurisdiction of Courts* in *Banco Regis*, that Judge *Ingham* was punished for reducing an *Amerciament* to a lesser Sum, tho' in pity to a poor man, because the Statute 18 *Eliz.* 3. Statute 4. still in force, prohibits him and all Judges
to

to do any thing in prejudice to the King. And some Historians report, *That the Clock-House in Westminster was built with the Fine, and the great Bell hung therein, that the Judges may remember when they hear it Toll, to observe their Oaths established by that Statute.* Queen Elizabeth received and countenanced oppressed *Carmen-* then upon his discovery of *Abuses* in the Customes, and subjected the Officers to his Methods. * Also King James being Informed of abusive practices in withdrawing the *Green-wax-Fines*, constituted a Surveyor thereof, and settled Orders to enable him to perform his Surveyorship, which were hung up in Tables in the *Exchequer*, but are now imbezelled or lost; for Officers love not lasting Monuments of their Corruptions: And the old Fine Rolls shew, that contempts in *Chancery* were duely estreated, which are now wholly neglected: Also it appeareth by good matter upon Record, that all Your Royal Progenitors have
consti-

* Cam-
den's
Britannia

* Ver-
non's
Book,

constituted Special Commissioners to inquire into Officers Misdemeanors: And that the same were ever reformed upon their Certificate without more ado, yet to hinder a Reformation.

Aligati-
on dis-
proved.

1. The said *Brunskells* opponents, stopt a Grant to the said *Brunskell*, after it had past the Privy - Seal, with no small trouble and charge to him, upon a suggestion that it was *Empson* and *Dudleyes* Case, who had power to Impose, Imprison, Levy, Compound, and Discharge. Whereas the said *Brunskell* never had or desired any power, but to make Officers Record all Fines and Amerciaments duely; or charge them, when they withdraw or conceal any.

2. They represented a Grant of the Office of Surveyor, illegal for the said *Brunskell*; and denied him a Commission of Inspection, for fear of setting malicious informations on foot. Whereas (with running the risk of Barratry) he may turn Informer at any time without a Commission.

3. To

3. To hinder Persons of Quality to be Surveyors; The said *Brunskells* Opponents represented this Revenue, as an inconsiderable project. Whereas their own Oathes, Statutes, and Presidents before-mentioned, clearly evidence; That Fines and Penalties were ordained for the Punishment of bad, and Relief of good men; because ill men will rather obey *formidine pænæ*, than *vertutis amore*: Ergo, No projects.

4. The Right Honourable Earls of *Peterborough* and *Tarmouth*, *Henry Lord O Bryen*, *Sir Francis Compton*, *Mr. Greenvil*, *Mr. Fanshaw*, and the said *Brunskell*; upon the Officers certifying your Majesties High Treasurer *Danby*, That the *Green-wax-Fines* yeilded but 500 *l. Comunibus Annis*, proposed to Farm the Moiety thereof, at 250 *l. per Annum*; excepting thereout all forfeitures of Popish Recusants & Conventiclers; yet the said *Brunskells* Opponents hindred them to be Surveyors or Farmers upon a suggestion; That such Grants were

E Illegal,

gal, imprudent & impracticable until
 it appeared; That a Grant of the Of-
 fice of Surveyors was then in being
 to one Mr. *Aram*, and all the *Green-
 wax-Fines* were then, and are now
 in Farm throughout the Kingdom
 of *Ireland*, and in *England*, within
 the Dutchy and Countyes-Palatine of
Durham, *Lancaster* and *Cheshire*, and
 to divers Cities, Corporations, and
 Lords of Liberties; where divers of
 the Grantees are impowred, to Impose,
 Imprison, Levy, compound and dis-
 charge; And your Majesty was gra-
 ciously pleased, upon the Judges and
 Lawyers agreeing them to be Legal,
 to make this Remark thereon: If
 Grants with those Powers were good,
 allowed and practiced: The Grants
 without them could not be illegal;
 & the Judges and Lawyers agreeing,
 the Surveyor to be a necessary Of-
 ficer: Your Majesty was graciously
 pleased, to make this further Remark
 thereon: That it was more prudent
 to grant a Moiety of the improve-
 ment, than a certain Sallary; be-
 cause

cause it obliged the Grantees to promote your Majesties Profits with their own; Whereupon the severall Letters-Patents passed Your Majesties Great Seal; Yet the Judges hindred the Patentees to Officiate, by not Subjecting Officers to a prudent controul for your Majesties Service; until the Grants were revoked by an Order of Council: It is endless to repeat every passage, and what trouble and charge the said *Brunskell* and his Partners were put to with Feeing and instructing five or six Lawyers at a time, to disprove their Opponents fictitious Alligations: And how the said *Brunskell* being denied to be Surveyor, was no sooner gone into the Country for a little repast, but his Enemies concluding him to be wearied out, adjudged the Office of Surveyor Legal, and fit for their own Creatures; useing great endeavours to pass two Patents thereof; until your Majesty being gratioussly pleased to stop them, declared the Grant as legal for the said *Earl*

of *Tarmouth* and *Brunskell* as any other; and how the said *Brunskells* Opponents delayed him for an Account from *Ireland*, and after the Account came, untill the said Earl of *Tarmouth* Petitioned for a hearing before your Majesty in Council; and upon *Sanders* arguing and maintaining the Legality of the Grant desired, Your Majesty was graciously pleased to constitute the said *Brunskell* Surveyor, who obtaining your Majesties Grant by an Order of Council about *April* 1681. acquainted the Lords Commissioners of your Majesties Treasury, That it required many Deputies to attend the Great Courts at *Westminster* Assizes and Sessions, and to go from Office to Office, tracing Fines and Amerciaments, duly to Accompt; who will not act without an assurance from your Majesty or Treasurers, how they may be paid: The said *Brunskel* therefore petitioned the Lords Commissioners for Orders, or Rules, to inable him to Officiate as proposed; Or an Allowance

Allowance for Deputies: And the said
 Earl of *Tarmouth* thinking the Judges
 or Lords Commissioners to blame,
 in not settling Orders, or an Allow-
 ance for Deputies; and taking such
 Lawyers as say and gainsay to be ill
 Advocates, and worse Guides to the
 Ignorant, Petitioned for a hearing be-
 fore your Majesty in Council: But
 the late Lord Chief Justice *Pember-*
ton, who declared, That your Maje-
 sty had no such Revenue (*Et nes-*
cit vox missa reverti; and the other
 Judges, who did not contradict it,
 unwilling to hear all the matter of
 fact, publickly debated, and proved
Quia qui que vult dicit que non vult
audiet) represented the said *Brunskels*
 Case to be impertinently long; And
 for that reason it was not read:
 And the said Lord Chief Justice *Pem-*
berton, not only moved your Maje-
 sty to take his and the others Judges
 opinions thereon, which was not re-
 jected, but quibled upon the said
Brunskels ignorance, in jumbling
 Actions - Popular, and informations

together : whereas Agrieved Subjects may sue by Indictment, Bill, Plaint, or Information : *Ergo*, An Information is a Popular Action : And now its Alledged, That it was proved before your Majesty in Council, That the said *Brunskel* did not Fee Lawyers and Officers as pretended ; whereas the said *Brunskel* never heard it mentioned : If he had, he could certainly have produced the Accompt to shew, how he had equally expended with the Earl of *Tarmouth*, and more than any of his Partners, in procuring and passing your Majesties Grants : And if it had been usual, he would have had Acquittances for the Fees and Gratifications which he gave them : However, the Countess of *Tarmouth*, who best knoweth what Fees were given, and to whom, can if need be, give your Majesty a full Accompt thereof ; The ill success of the Farmers of the Law Duty, after conviction of Attorneys, Officers, and Soliciters, upon chargeable Tryals at Law ; and the

the great Oppositions which the said *Brunskel* hath met with, sheweth what encouragement is given to Prosecute and Convict Officers of Frauds and Concealments for your Majesties Service: *Ergo*, The first Reports of your Majesties Counsel, Judges, and Officers, Confessions, Statutes, Oaths and Presidents in the Affirmative, the premises considered, may well out-balance all their latter Reports, and Allegations: And influence your Majesty to believe, That **Great Abuses** are Practiced, and fit to be Remedied.

As to the Præfines upon Pleas of Land.

The said *Brunskell* and Mr. *Charles Myddelton*, obtained your Majesties gracious promise to be Commissioners in the *Alienation* Office, before Mr. *Bertne*, Sir *E. Turner*, or Mr. *Courthope* addressed themselves to your Majesty, and being joyntly Commissionated or Deputed by the Lords Commissioners of your Ma-

ties Treasury with the said Bertue, Sir E. Turner, and Courthope, in order to improve this branch of your Majesties Casual Revenue; acquainted their Lordships, That your Majesties Duty is Certain (*viz.*) 10 *l.* for every 100 *l.* *per Annum*, according to the improved Annual values, as appears by *Rastalls New Natura Brevium* under the Title *Deceit*, and by Rents and Annuities; and all Estates have certain values, *Qui id certum vocari quod certe reddi potest*

* This Duty falls under the said *Brunskells* care, as Surveyor of the *Green-wax-Fines* more particularly, as a Commissioner constituted in the *Alienation-Office*, by your Majesties most Gracious and Special Command.

* And Fines and Recoveries being the fund of this Duty, *Dock old sleeping Intails*; Bar *Feemes* Covert, Secure Purchasers and Mortgages alter five years

non Clame, which no other Conveyance can do. The present Commissioners by under-rating Estates abate 1200 *l.* in every 1500 *l.* of the real Duty, which sheweth your Majesties profits in a moderate way of rating, may be improved to 30000 *l.*

Free and
Post
Fines
30000 *l.*
per annum,

per

per Annum, and more, if Ejectment to try Titles, were rated to pay as Formedons used to do.

The Rates or Methods which the present Commissioners observe, appear to be Arbitrary, and very inconvenient; for they never abate of the full Duty in Rents and Annuities, or certifie the Values otherwise than they are; because they want a Commission or Authority to abate where the Values are known; yet they rate other Estates five times lower than they appear to be by the Parties own Confession: and to Cloak it, certifie upon the back of every Writ, that the Annual Values are affirmed to be as they rate them; whereas Deceit being *Malum in se* is dishonourable, seeing *veritas non Angulos querit*; but more especially in this Case, because Your subjects may infer from thence, that it's not your Majesties pleasure to abate of the full Duty in any Case; and Your subjects in *Wales, Durham, Lancaster, and Cheshire*, complain of paying
more

more to Farmers, than their fellow Subjects pay to your Majesty ; and Younger Children, and Poor People in all other parts of your Kingdom, Complain, That even right is not done to them (as the Statute 20 *Edw. 3.* directeth) because their Rent, Charges, Annuities, and whole Estates, pay after the rate of 25 *l. per Cent.* and great Estates pay but 5 *l. per Cent.* at most, and rating great Estates higher or lower upon different occasions : As for instance, Settlements lower than Purchases, and Mortgages lower than Settlements, maketh your Subjects think the Duty Arbitrary, who are apt to blame their Attorneys, if their Fines be not low ; because all Your Subjects naturally love to be freed from Duties. Therefore Attorneys wrangle with your Majesties Commissioners for an Abatement to please their Clients ; which being obtained, is rather attributed to the Commissioners kindness, than you Majesties Bounty : So your Majesty neither gets your Duty,

Duty ? nor grateful acknowledgments
 inlieu thereof: Yet the Commissioners
 to excuse themselves, alledge their
 Case to be like the Officers of the
 first-Fruits, who have established
 values, and no power to Administer
 Oaths to discover any other. There-
 fore make all Spiritual Persons pay
 equally and proportionably thereto.
 But the Commissioners in the *Alien-*
nation Office have a Master in
 Chancery assigned, who sits in the
 Office on purpose to Administer
 Oaths, to discover the improved Va-
 lues of Estates, That your Majesty
 may not be deceived therein: And
 it's impossible to take measures by
 the rates of former Commissioners;
 because Estates between one time
 and another, are clogged with or
 disburthened of Incumbrances, and
 daily improve or impair. It appear-
 eth by the old Books, That *Lam-*
berd and *Fortescue*, who were the first
 Commissioners upon the erection of
 this Office, ever Administred an
 Oath to discover the real Values of
 Estates,

Estates untill they found by experience, that Attorneys, and Solicitors, or their ill principled Clyents got Knights of the Post to under-swear them; then they omitted the Oath to rate discretionarily higher for their Masters service, as they might Lawfully do, because their Master the Earl of *Leicester* was absolute Farmer, answerable for nothing but the Rent, while they rated Estates within their real Annual Values; but the present Commissioners Case is far different, because the surplusage of the profits (as well as the Rent) is to be accompted for, and answered to your Majesty; for your Majesties Grant to the Lords Commissioners of Your Treasury, is only a trust for continuing the Office, to free Your subjects from the chargeable Formes of the Courts: Upon these considerations, Sir *Robert Sawyer*, and Mr. *Ward*, gave these following Opinions.

Sir Robert
Sawyers
opinion.

Where the certainty appeareth what your Majesties Fine is; The Commissioners

tioners cannot abate thereof; They having no such Power by their Commission.

And in case the Method observed by former Commissioners, be found greatly to your Majesties prejudice; others more beneficial for your Majesty, may by Law be prescribed.

I suppose Fines and Recoveries are seldom Levied, but where the necessity of the Case requires them: Neither do I know how they can be avoided or supplied by any other sort of conveyance to secure Purchasers, Mortgages, &c.

R. Sawyer.

If your Majesties Duty be certain in it self, I cannot see how the Commissioners without an Authority, mediate or immediately from your Majesty, can lessen or abate it.

Mr.
Wards
opinion.

Every person intrusted in your Majesties Revenue, is answerable to your Majesty for the execution of his Employment; And by Suite in the Attorney Generals name, being convicted of
any

any Fraud or wilful Breach of his Trust, to your Majesties damage, is lyable by Law, to make the same good.

E. Ward.

The said *Myddelton* and *Brunskel*, not only presented the Lords Commissioners of your Majesties Treasury with these Opinions; but further acquainted their Lordships, That it was impossible to Improve or Manage this Branch of your Majesties Revenue well, unless the said *Bertue*, Sir *E. Turner*, and *Courthope* were under an obligation, restriction or limitation in point of Interest, to be as industrious as the said *Middelton* and *Brunskel* to serve your Majesty.

1. Because they were constituted Commissioners upon a Suggestion, That it was not to be Improved or Better managed than they had done it: *Ergo*, An Improvement or better Management Convicteth them of ignorance, or wilful Breach of their Oaths and Duties.

2. The present Commissioners Li-
mitten

mitteth three to be a *Quorum*: *Ergo*
 They may Rate anddo as they please;
 But the said *Middleton* and *Brunskell*
 can do nothing without them.

3. The Custom for any Commis-
 sioner alone to rate Writs in or out
 of the Office, cannot be avoided; be-
 cause Persons passing Fines and Reco-
 veries, upon emergent occasions can-
 not wait Office-hours, nor until a
Quorum can meet, and while Mort-
 gages are rated lower than Settle-
 ments, and Settlements lower than
 Purchases, The said *Bertue*, Sir *E.*
Turner, and *Courthorpe*, to ingratiate
 themselves with great Men, and their
 Adherents, may under-rate Estates to
 your Majesties prejudice, and hinder
 an Improvement: and Attorneys to
 please their Clyents, will ever go to
 the Commissioners interested, to rate
 low; and if Writs by them rated
 should be stopt until a further En-
 quiry be made, it will give a gene-
 ral disturbance to business, and may
 be more injurious to Your Subjects,
 Levying Fines, and suffering Recove-
 ries

ries upon emergent occasions, then waiting until a *Quorum* can meet: *Ergo*, It's necessary to reduce the Commissioners to a certainty, as for instance: Suppose Estates appear to be 100 *l. per Annum*, they may be limited to rate every 100 *l. per Annum*, as 30. 40. or 50 *l.* and less, where Fines and Recoveries be Levyed, and suffered of the same Estates between the same parties within a year or two: And in this manner your Majesty, by declaring Your pleasure to abate more or less, may make the Duty more easie and grateful, than the said *Bertue*, Sir *E. Turner*, and *Courthopes* Methods now render it to your Subjects: And by this means your Majesty may be freed from the Sallery of a Master in Chancery extraordinary: And when Attorneys or their Clyants know before hand, what they have to pay, they will not wrangle with your Commissioners for an abatement, but readily pay as they do in Rents and Annuities: And if they deceive your Majesty,

jesty by misinforming or concealing
 the true values from Your Commis-
 sioners, It may be discovered up-
 on a *Melius Inquirend'*: And two or
 three Exemplarily punished for fraud
 or deceit, will set things right: The
 said *Myddelton* and *Brunskell* fre-
 quently petitioned the Lords Com-
 missioners, to Cancel their present
 Deputation or Commission, & by an
 Order or Instrument in Writing, to
 give them such Methods as their Lord-
 ships thought fit, or confirm such as
 the said *Myddelton* and *Brunskell* had
 proposed for your Majesties Service;
 or joyn them with more equal yoak-
 fellows: But their Lordships giving
 no answer thereto, the said *Middel-
 ton* and *Brunskell* Petitioned and Pro-
 posed to abate 6 *l.* 10 *s.* in every 10 *l.*
 of your Majesties real Duty of Pre-
 fine, and to be limited, not to exceed
 that rate, and to improve that Branch
 of your Majesties Revenue thereby
 1000 *l.* *per Annum de claro* to your
 Majesty; and pay the said Bertue,

Sir *E. Turner*, and *Courthope* their Salaries to sit still, or accept their own, and acquiesc: Also acquainted their Lordships, That Fines and Recoveries were seldom or never Levied, or suffered, before the necessity of the Case required them: Because the Judges, Attorney General, Officers and Attorneys Fees amount to 6 or 7 *l.* upon every Recovery with single Voucher: To 10 or 11 *l.* upon Double Vouchers: And 15 or 16 *l.* upon Treble Vouchers: And upon every Fine Levied to 4 or 5 *l.* whereof they never abate, though the Estate exceed not 40 *l. per Annum*, where your Majesty in pitty thereto taketh nothing. And your Subjects are at great expences, besides these Fees in Travelling to *London* Assizes, and other places, to acknowledge them before the Judges, or Special Commissioners: And if Fines and Recoveries happen to be levied before the necessity of the Case require, Estates may thereby be put into a posture to be Morgaged, Setled, or
Sold:

Sold : and Vendees, Mortgagees, of Persons bestowing their Daughters in Marriage, may be satisfied without a further Fine or Recovery thereof, and then your Majesty is deceived.

The Farmers in *Wales, Durham, Lancaster, and Cheshire* (where this Duty hath been Farmed ever since it had its rise and beginning, following the steps of their predecessors) rate as high for themselves, as the said *Middelton* and *Brunskel* have proposed for your Majesty ; and the Farmers must pay their Rent out of their own Pockets, if they by ill management dwindle the Duty to nothing, whose interest and experience, the Premises considered, may reasonably out-ballance the said *Bertue, Sir E. Turner, and Courthopes* Allegations, who have certain Sallaries, whether your Majesties profits be little or much : And although the Lords Commissioners have not altered the said *Middelton, and Brunskels* Com-

mission, nor joyned them with better *Toke-fellows*; nor confirmed the Rates or Methods proposed, nor prescribed better; nor enjoyned the said *Bertue*, Sir *E. Turner*, or *Courthope*, in point of interest to improve this Revenue; Yet have stopt the said *Middelton* and *Brunskels* bare Sallaries, to defray the Lady *Plymouth's* Pension; who never received any thing for Dyet, and Board-Wages. And the said *Bertue*, Sir *E. Turner*, and *Courthope*, who ever received Sallaries, besides 100*l.* apiece for Dyet and Board-Wages, are now permitted to receive theirs. It's endless to repeat how Officers misrepresented the said *Brunskel* to hinder him to be a Commissioner until the late Master of the Rolls, Marquess of *Winchester*, and Mr. *Coats*, now secondary of the Common Pleas, with whom the said *Brunskel* was Educated in the Practice of the Law, not only gave an experimental Character of him for Integrity and Ability; but were willing (if need be)

to

to be Security for his faithful performance: And how Officers, who

* sit Rich and Warm, *de=*

try this Duty, as displeasing to some; but never acquaint your Majesty how grateful it will be for your Majesty to take,

and give it to Your Loyal indigent Souldiers and Servants; or indear Your subjects, (of whom your Majesty may demand it,) with a General Gift, Grant, or Pardon of all; or what part thereof your Majesty in Your Royal Wisdom thinks Fit.

The said *Brunskel*, therefore humbly, and in all Duty, appealeth to your Majesty, the Premises considered, Whether he, or the said *Bertue*, Sir *E. Turner*, and *Courthope*, deserve Salaries and Employments.

* It is storied, That Bishop *Lattimer*, upon King *Hen.* the 8th. declaring himself troubled to see his *Coffers* empty; Replyed, That if his Majesty did but put himself into a good Office, he might soon fill them.



As

As to Heriots and Relieves.

Sir William Jones, Sir Robert Sawyer, and Sir John Sympson, gave their Opinions; That Heriots and Relieves are fully saved in the Crown, by the Statute 12 Car. 2. cap. 24. But now tis alledged, That Tenures as part and parcel of Mannors, pass by your Majesties Grant of a Customary Mannor *cum pertinen'*; whereas Heriots and Relieves being Services incident to Tenures, and Tenures in Gross to the Persons, and disappendant to Land, or Mannors, cannot pass by grant of the Mannors or Land *cum pertinen'*: As for instance, There is no Land in *England*, in the hands of any Subject, but what's holden of some Lord or other, by some kind of Service, *Cooke upon Littleton, Fol. 65. a.* And the Services make Tenures *Fol. 92. b.* And every Freehold Tenant (except in *Frank Almoigne*) is bound to do Fealty to his Lord for the Tenement

ment holden of him, *Cooke* upon *Littleton*, *Sect.* 91. If Lords knew the advantages of Homage and Fealty, they would not neglect them, *Cooke* upon *Littleton*, *Sect.* 94. Also the Writ *de Cessavit* saith *precipe a quod juste, &c. reddit B. Tentum, suum quod de eo* (which is *de Domino non de Manerio*) *tenuit per tale Servitium, Et quod perfat' reverti debet, Eo quod predict' a infaciendo Servic' per bien-nium cessavit, &c. Ergo*, The Tenures being in Gross to the Person, and disappendant to the Mannor, cannot pass with the Grant of the Mannor *cum pertinen'* in your Majesties Case; Because the Services which make the Tenures oblige Your Tenants upon pain of forfeiting their Estates by Force of the Statute 13 *Ed.* 1. to be ever in readiness to defend your Majesty and Kingdom in time of War, and encourage Tillage in times of Peace, for the preservation thereof, and relief of the poor: And an Army of such Freehold Tenants may in reason be thought better

Souldiers than Hirelings; saying, *Omnia mea mecum porto*, who will fight for (or revolt from) your Majesty, as their Interest leads: It is agreed, That Tenures and Services are Established by Custom, and Common Law, *pro bono publico*: That the Common Law shall be preferred before Acts of Parliament clashing with it; That if a private Lord Alien a Customary Mannor consisting of Freehold Tenants, the very Tenures Services and Royalties which he hath, shall pass to the Alienee by general words; because it's equal to your Majesty and Subjects, whether the Alienor, or Alienee have them; that the Act and Deed of a private person, shall be construed most strongly against him: But when Customary Mannors come into the Crown, by *Attainder*, *Escheat*, or otherwise: The Tenures are thereby changed from the Person of the Lord, to the Person of your Majesty; so become special Royalties: And Royalties shall not pass out of the Crown, by the Grant
of

of the Mannors, *cum pertinen'* or general words, *Hob. Rep.* 233, 234. *Plow. Com.* 333. *b.* 334. *a.* *Dyer Fol.* 268. *Davys Rep. Fol.* 56. *a.* If a private Lord Alien Land, it shall be holden of the Alienee. If your Majesty Alien, it shall be holden of Your Self in *Capite*, *Rolls Abridgments, Fol.* 517. Private Lords may, and do frequently Manumit their Tenants: But if your Majesty Release a Tenant in *Capite*, to hold by a *penny*, and not in *Capite*; That Release is void; because the Tenures are incident to Your Person and Crown, *Rolls Abridgments, Fol.* 513. For that reason the Homage and Fealty of your Majesties Tenants do differ from private Lords: For your Majesties is called *Homagium Ligeum*, which bind them by Oath to be Your subjects, of life and member, *Cooke upon Littleton Fol.* 68. And every thing is expounded most largely and beneficially for your Majesty: Because the Profits of the Crown are termed,

Orna-

Ornamenta pacis et firmamenta Belli.
 And of so High Estimation, that every body is bound to promote them, *Cookes Reports*, the Earl of *Devonshires* Case: Therefore the Learned Judge *Hutton* declared, Tenures and Services to be inseparably annexed and united to the Imperial Crown: And the Learned Lord Chief Justice *Hailes*, and others, who had the penning of the Statute, *Anno 12* of your Majesties Raign, saved Rents, Heriots, and Suits of Court incident to Tenures in *Capitee*, to be as they were before the Tenures were, thereby turned or alter'd into common Soccage: Also createth a Relief as in Soccage Tenure, and saved the Fealty incident thereto: And the 4th. proviso of the same Statute dischargeth Tenants holding by Soccage in *Capite* of no service, but Ward Value, and forfeiture of Marriage *Livery primer seisin ouster le Mayne pur fair* Fitz Chivalier, & *purfile Marrier*: Ergo, Heriots and Reliefs ought to be in charge with the Auditors, where

where your Majesty hath not granted them away in *Terminis*, as separate and disappendant to your Mannors.

As to Offices.

The Law consisteth but of two parts, viz. Judicial and Executive: And most Offences being Baylable, it's at the Criminals Election whether they will stand Tryal, or forfeit their Recognizance: *Ergo*, If Officers for Bribes or Rewards withdraw Recognizances, They frustrate the Judicial part. Officers are also entrusted to see proceedings right and duely Drawn, and Recorded; but if they by ignorance, corruption, or negligence, draw long and vexatious Bills, Answers, Orders or Decrees; or Imbezal, or deface Depositions in Equity: Or draw ill Declarations, or Pleas, or Misenter Special Verdicts or Judgments at Common-Law: It giveth great disturbance to Suitors to have the Errors

rors rectified; and the Non-amendment thereof, in due time giveth litigious Adversaries opportunity upon Writs of Errors, to be very vexatious, and frequently overthroweth all the proceedings thereon: It was found by experience, when the Judges had divers Fees, as well as their Officers, which increased or decreased as Suits were delayed, and proceedings multiplied, and sold Offices at dear Rates, that they placed men therein for Lucre, without Merit, and acted or countenanced such things as were contrary to the Laws and Statutes in force: For which, some Judges were put to Death, divers Fined and Suspended; and others were Banished, as appeareth by Ancient Record and History: Also, the Attorney and Solicitor General did not then prosecute and convict the Officers guilty of misdemeanours; because their own practice and profit, as private Councillors, depended upon the Favour of the Judges, and indearement of Officers; therefore the Sallaries
 of

of the Judges, and Kings Counsel were enlarged and made certain ; For it's Enacted by the Statutes 18 and 20 *Edw. 3.* That the Judges shall not take Gifts, Fees, Robes or Rewards of any, but your Majesty ; and the Oath of a Judge thereby established, enjoyneth the observance thereof, because their Salaries were then made certain, which have been since further enlarged. It's also further provided by the Statute 12 *Richard 2.* That the Judges and great Ministers shall not sell Offices : Also by the Statute 3 *Edw. 1.* Cap. 26, 27, and 30. That Officers shall not commit Extortion, that the Subjects (Cap. 28.) shall not be disturbed in their just Rights: That Deceit (Cap. 29.) shall not be practised : And the proviso, or saving in the Statute 5 and 6 *Edw. 6.* (*viz.*) That the Judges may do as formerly : Doth not Impower the Judges to Sell, because the aforesaid Statute 12 *Rich. 2.* prohibiting them, is not thereby repealed : And the present Judges cannot

not apply *Mittons* Case to themselves; for the Office of the County Clark is adjudged to be in the disposal of the High-Sheriff; because the High-Sheriffs Office is altogether Executive; and the County Clarks being their menial Servants, or Deputies, cannot Sue for Fees, nor Act any thing, but in the High-Seriffs Name: So that the High-Sheriff being punishable for their Deputies misfeizance, are forced to take security to indemnifie themselves: But the Office of a Judge is altogether Ministerial; and the Law doth not punish Judges, if Officers fail in the Execution of their Office; unless they make themselves parties, privy, and consenting: wherefore they never take security of Officers to indemnifie themselves; for Officers stand or fall by their own good or bad behaviour; because the Law reposing a Trust in the Judges to punish Officers Misdemeanors, took away the Officers dependance on them, that the Judges might not flagg therein:
 There-

Therefore all Sages of the Law, writing of the Office of a Judge, agree the observance of the aforesaid Statutes, to be a material part of the Office & Duty of a Judge; because these Statutes, and divers other good Laws and Statutes, are grounded upon the Statute 9 *Hen. 3.* cap. 29. Which saith, *Nulli vendemus, nulli negabimus, nulli differemus Justiciam*: And the Lord Cheif Justice Cooke, declareth experimentally, (and the reason is much stronger, since offences were so generallyailable) That Justice cannot be duly administred, if the Statute 12 *Rich. 2.* Prohibiting the Judges to sell Offices, be not observed; Because, as the Execution, which is the life of the Law, dependeth upon the honesty of Officers, as aforesaid. Its *violenta presumptio*, that Knaves, whose Pockets are better lin'd then Honest Mens, and Consciences not so strait laced, will ever give most for them; who seldom stick at any thing, to reimburs & enrich themselves: Yet the L^d. Keeper & Judges

Judges take Fees of Suitors upon divers proceedings, and not only Sell Offices at seven or eight Years Value, but wink at their Officers selling thereof, and take great Summs of Money upon their surrenders, and admissions; and *New-Years-Gifts*; and Record Officers admitted *Gratis*. Whereas Records were ever esteemed so Sacred, That the Law alloweth no Plea, or Averment against them: And the Attorney and Solicitor General seldom or never persecute popular Actions, Informations or Pleas of the Crown, unless Your agrieved Subjects Fee them to do it: Whereas its a Maxime, That your Majesty can do no Wrong; and Maxims are fundamental points in Law: It doth not appear by any matter of Record, That your Majesty or Royal Ancestors ever dispenced with any Statutes in force, whereon depended the due Administration of Justice; But it appears, That Pardons have been frequently Granted upon breach thereof after the Fact committed,

mitted, by your Majesty and Royal Progenitors special Grace and Favour.

The Statute 1 *Hen.* 4. cap. 6. provideth, That such Offices as be not expressly named in Letters-Patents, shall not pass out of the Crown: The E. of *Devonshire* had *omnia & Singula vaod' Feod' & Regard' eidem Officio Spectan' seu ab antiquo usitat' vel gavis*; and a Privy-Seal particularly impowring him to dispose of old rusty Iron as his Predecessors had ever don, who by a long usage of 80 years had disposed thereof without interruption: Yet the Judges 4. *Jacobi* resolved his usage and prescription void upon a presumption, That it began at first upon usurpation, because it did not appear, that such things were ever Annexed as Fees to that Office; *Ergo*, The usage of Selling inferior Offices (being not Annexed to the Judges places as Fees to be Sold) cannot be good: For their own Records declare Officers *Secundum Consuetudinem Curia*

to be admitted *ex merito gratis*: And persons in their own Right cannot Legally Transfer a greater Estate than they have; *Ergo*, The Judges *durante bene placito* cannot convey Inferior Offices to persons *durante bene se gesserint*, unless they acknowledged themselves to be in nature of Stewards of Coppy-hold Courts, and then they own the right transferred, and Duties paid upon Admission, to be your Majesties as Chief Lord. Yet the Lord Chief Justice *North*, hindred divers persons, that for good Service, had obtained your Majesties Gracious promise of the Office of Clark of the Treasury in the *Common-Pleas* to pass their Patents, suggesting it to be a perquisit incident to his Office: Whereas, particular Grantees had executed it by sufficient Deputies without intermission above 90 years, and his Lordship then paid 500*l. per annum*, as his late Predecessors had done, to *John Lord Berkley* the last Patentee, which was an acknowledgment of your Majesties

ties Right: And whereas the said Statute 5 & 6 Ed. 6. saveth a Power to all Persons seised in Fee, to Sell Offices: your Majesty being so seised, *jure Coronæ*, may do it: For as your Majesty constituteth the Spiritual and Temporal Judges; It argueth, that your Majesty may appoint the Inferior Officers; because, *omne majus trahit ad se minus*, Its well known, when your Majesty gives; Your great Ministers Sell Offices; otherwise it costs Your subjects in Fees and Gratifications, more than the Purchase, as hereafter proposed will amount to: Its therefore humbly and in all duty proposed:

1. That as the present Officers have paid 7. or 8. years value for their Offices, they may continue therein; and when Void, they may hereafter be supplied with experienced Clarks, who may Termely pay to your Majesty; in nature of First Fruits, one Moyety, or quarter part of the profits as they arise, for such Terme of years as your Majesty

Proposd.

shall think fit: And as Commissioners are appointed to dispose of Ecclesiastical Livings, so Commissioners may be appointed to take care of your Majesties profits arising thereby, who may be enjoined under great penalties to bestow Offices accordingly.

2. That the Proposals extend not to any Office, where the Sallaries are paid by your Majesty, but such only where the perquisites are paid by Suitors, as incident or appendant thereto by right.

3. That an exact Table of Fees adjusted by the ablest Officers, and Records, due and belonging to every Office, may be hung up in the respective Offices; and while Officers behave themselves well, (tho deputed but during pleasure) they may in no wise be dis[redacted] played

*Reasons or Arguments humbly offered
to maintain these Proposals in all
Points of Law, Equity, Prudence,
and Practice.*

1. The Officers by Buying, have forfeited both Money and Offices, and the Judges their Right, by Selling or Transferring a greater Estate therein than they have; the very Records say, That Officers *Secundum consuetudinem Curiae*, are admitted gratis; And Records were ever accounted sacred; *Ergo*, The custom of Selling or Vitiating sacred Records, (with a *Gratis Admittantur*) falleth under this *Maxime, malus usus abolendus*; and it will not only indear the Officers to be pardoned and continued in, upon their good behaviour; but when their dependence is wholly upon your Majesty, they will have a greater regard to your Majesties Business and Profits

2. This Method (requiring no
G. 3 ready

ready money) will be satisfactory to all Loyal Subjects, because the Sons of such as were impoverished by the late intestine Rebellion, will be enabled to obtain Employments, being now incapacitated to buy, or gratifie such as procure them Grants thereof: Furthermore, it will prevent extortion; for when Officers deposite great sums of money upon Purchase, or Admission to their Offices, it inclines them to indirect Practices to re-imburse themselves.

3. Your Majesties Fines and Amerciaments depend chiefly upon the Executive part of the Law, and the honesty of the Officers intrusted therein was at a low Ebb, if your Majesties Attorney Generals Reports and Experience be not mistaken; *Ergo*, 'Tis prudent to oblige them in point of Interest, to be carefull thereof, because Officers will ever be true to their interest, and yield perfect obedience to your Majesty, or such as your Majesty thinks fit to intrust with the placing or displacing of them,

4. The

4. The Author which writ the *Auditum Britannicum* Fol. 202. saith,
It's unjust to deny a Prince that Power,
which every Subject hath to place
and displace, or retrench his Servants :
 That nothing contibutes more to the
 Grandure and Glory of a King and
 Kingdom, than faithful Counsellors;
 who advise the Prince, what he Ought
 to do; rather than what he May do:
 And (as an expedient to keep the
 Officers within the Sphear of Integrity
 and Justice) proposeth the Example
 of *Henry the Great of France*; who
 composed a certain number of Judges
 (in nature of Commissioners as pro-
 posed) diligently to superintend the
 Officers, and receive Information of
 the People; Whether they have been
 justly dealt with, and where not; and
 accordingly to Reward or Punish.

5. The Great Chamberlain lately
 challenging a right to dispose of an
 Inferior Office as the Judges do;
 His Lordships usage, upon the hear-
 ing and Debate thereof, before your
 Majesty in Council, was adjudged

void; and Sir *William Jones* Attorney, and Mr. *Finch* Solicitor General, and Mr. *Keck* of Counsel for the Patentee, argued in behalf of your Majesty: That your Majesty might determine the Lord Chancellors or Keepers long usage of disposing of Benefices of small value: And all usages of that kind, although they were impowred to do as their Predecessors had ever done, who without interruption, had disposed thereof; because their usage began not of Right, but barely by permission of Your Royal Ancestors, to free themselves from the trouble of such small concerns: And the late Lord Chancellor agreed thereto; and your Majesty was graciously pleased to make this Remark thereon: That Offices which at first were not worth any thing, are now become very considerable: And instanced the *Cofferers-Office* for one, and declared; That your Majesty altered the usage of Your Houshold-Servants, stepping into Employments Successively; Because

cause Your Majesties happy Restauration was formerly adjudged, to be in nature of a Conquest; and your Majesty was thereby impowred to do it; And the Case falleth under the same Circumstances: For many Offices, which at first were not worth any thing, are now become more considerable than the Judges Salaries. As for instance, The three *Prothonotaries-Offices* in the Common-Pleas, and the Clerks of Assizes for *Torkshire*. The late Lord Chief Justice *Pemberton* (as it's reported) agreed to admit one Mr. *Adderley*, into one of the *Prothonotaries-Offices* for 6000 *Guinies*; and there be many other considerable Offices, which may be executed by Deputies, as well as the *Custos Brevium*, *Chyrographers*, or Sir *Robert Henleys* Office, which plainly sheweth, when ever Your Majesty thinks fit to dispose thereof; they will be acceptable rewards to persons for their good Services; and free Your Revenues from Pentions, to the great satisfaction of Your Loyal Subjects.

6. That

6. That private Persons, who hold Courts of Record in Fee, by a derivative Power from your Majesty, now Sell Inferiour Offices by force of a Proviso, in the Statute 5 & 6 *Edw.* 6. and permit not their Stewards or Judges to meddle with the disposition thereof, who have as great Power within their Jurisdiction, as the Judges have in the Superiour Courts; *Amulto fortiori*, your Majesty being Primitive, and seised in Fee, may do it.

A Particular of Offices and Perquisites in Chancery.

	per Annum, ll.		per An. ll.
Affidavit-Office	300	The profits of the Seals	6000
Bankrupt-Office	100	Involment-Office	306
Clark of the Patents	300	Softning the Wax	80
Six Clerks	8000	Seal-Office	40
Usher	300	Serjeant at Arms	100
Clarks of the Crown	500	The Master in Chancery extraordinary	80
Clark of the Presentations	200	in the Alienation-Office	120
Subpena-Office	400	Entering Clark	80
Cursitors	5000	Clark of Indorsements	140
Hamper-Office	1000	Receiver	80
Registers	2000	Clark of the Statutes	80

	per An. ll.		per An. ll.
Clark of the Appeals	40	Boxes in Court	300
Clark of the Leases	100	Prothonotaries Secondary	1500
Petibag	350	Coronator and Attorney	600
Clark upon charitable uses	50	Clark of the Treasury	500
Messenger or Pursuivant	100	Proclamator	60
Enrollment Clerks of the Kings deeds	40	Fines upon Latitats	100
Two Examiners Offices	2000	Clark of the Papers	100
Six Clerks under them	200	Clark to file Declarations	50
Six Clerks in the Rolls Chappel	300	Seal-keeper of the Bills of Middlesex	150
Perquisites for Orders upon Petit.	300	Clark of the Rules	400
Moyety of the Fines upon Originals	600	Philazers one for each County	200
Entring Causes for hearings	800	Clark of the Errors	100
Twelve Masters in Chancery.	2000	Cryer in the Court	100
		Porter bringing Records to be us'd in Court	10
Kings Bench per Annum.	ll.	All the Offices of Clark of Assizes	8000
Fees out of Latitats	200	Also of the Clerks of the Peace	8000
Fees out of Records of Nisi prius	500		

per An. ll.
 Perquisites for every Record of Nisi-
 prius entred upon Tryals, extend-
 ing to all Courts, Assizes and
 Sessions } 6000
 Fees out of Judgments and Bails, be-
 sides Sir Robert Henleys } 700

Common-Pleas per Annum. ll.
 Clark of the Treasury 500
 Custos Brevium 800
 Chyrographer 500
 Clark of Recognizances before both } 10
 Chief-Justices } 40
 Clark of the Supersedeas 100
 Clark of the Errors 3000
 Three Prothonotaries 5000
 Philazer: one with another

per An. ll.
 Clark of the Warrants and Estreats } 300
 of the Courts } 800
 Exigenters } 300
 Utlary-Office } 200
 King's Silver Clark } 80
 Clark of Essoyns } 120
 Jurata-Office } 40
 Proclamators keepers of the Courts } 200
 The acknowledgment of Fines } 500
 Fees out of Records made up for Tryal, } 200
 and Copies of Records } 450
 Box-Money } 200
 Fees out of Judgments, Bails, besides } 450
 Prothonotaries } 200

ll.
 Exchequer per Annum.
 Door-keeper of the Office of Receipts 100

per An. l.	per An. l.
All the Auditors	800
Remembr. of the first-fruits Office	500
The Tellers Office	1500
Messengers in Ordinary	100
Bag-bearer	20
Tally-Clarks	200
Remembrancers Offices	2000
Comptroller, Secondary, and several Clarks of the Pipe.	500
Keeper of the Records	40
The Under-Treasurer	500
Marshal	80
Auditor of the Press	200
Clark of the Errors	10
Faculty-Clarks	20
Four Messengers	160
Clarks of the Office of Pleas, in whose Office are four Attorneys	300
Clark of the Exchequer	200
Foreign Apposer	200
The Chamberlains of the Court, the Cryer, and several other Cryers	200
Admiralty per Annum.	l.
Register	300
Assistance to the chief Officer	100
Ecclesiastical Courts and Profits and Offices, (first-fruits ex- cepted)	12000
The Offices in all other inferior Courts, and the respective Coun- ties, Ports and Custom-House, may in reason be valued at	12000
Offices	

Offices are valued
 ed (taking one
 with another) as } 109714 *l. per An.*
 Sold, and amount
 to }

These profits will be in nature of
 Coppy-hold Estates, where Fines
 are paid upon Death, Surrender, and
 Admission, and the Officers depen-
 dence upon (will be of great use and
 advantage to) your Majesty.

The *Green-Wax*
Fines by the par-
 ticular valuation } 251000 *l. per An.*
 under every Abuse
 amount to }

Fines upon pleas
 of Land } 030000 *l. per An.*

Heriots and Re-
 liefes } 045000 *l. per An.*

Sum Total of
Green-Wax Fines } 435714 *l. per An.*
 and Offices. }

Di-

Divers Branches (*viz.*) Fines upon Original Writs, Fines or Amerciaments, *ad Finem Litis*, Fines upon Pleas of Land, or in real Actions, Heriots and Reliefs, being meer Duties; Your Subjects naturally love to be freed therefrom: Yet Your Subjects never forego Tolls, Aulnage, or other Duties which they hold by Grants from the Crown, and the Commissioners or Farmers of the Customes, Excise and Chimney-Money, never abate, because the Duty is certain Lawyers, Officers, Attorneys & Solicitors, never abate of their Fees, but take more, which they stile gratifications so salve it, with a *volenti non fit injuria*; whereas Clyents find by experience, that they are under a necessity of Feeing, Gratifying and Greasing the Wheels; otherwise their business goes heavily up hill; and private Landlords never suffer their Stewards to abate of (or Tenants to pay) what Rent they please: Yet the Officers of your Majesties Courts of Justice have carved out
the

the subjects ease, and their own profits, with altering the ancient course of Courts, to the diminution of the ancient & Inherent Rights & Profits of the Crown, without an expresse Warrant or Commission upon Record so to do; whereas the Author of the said Book intituled *Antidotum Britannicum* pag. 148 to 156. saith, That all Monarchs and States have held for a Prime and Alphabetical Law; That the publick Revenues are sacred and inalienable; for when Your Royal Supports is exhausted one way or other, It must be made up by Taxations upon the People, which is very uneasy to them: *Ergo*, It's really necessary for your Majesty to have Your old Profits settled, to be paid in *Statu quo* upon the innovated Proceedings or Practice: Or the honour of letting all Your subjects know, That it's Your pleasure to forgoe Your Duties, and dispence with the alterations: otherwise Officers will still be nibbling at your Majesties Profits, *Et ad quam finem sese jactabit au-*

dacia, is uncertain: And the Judges being fully imployed in judicial matters, cannot superintend the Officers: And Lawyers not being educated in the Practice of Attorneys, are wholly ignorant of the executive part; so generally take the head Officers advice therein, who are apt to speak favourably of the bridge they have gone over; and your Majesties Pardons, Licenses and Dispensations, being matter of Record; and the Judges wanting time to search and read, are in a manner necessitated rather to believe Officers than go and see: However, the said *Brunskell* (considering how great Officers decryed our Saviours Testimony) doth bear his Affliction Patiently, because his Conscience in this Case speaks peaceably to him, *Murus Abænus esto nil conscire sibi nulla pallefcere culpa.*

The other Branches of the *Green-Wax Fines* are penalties to be inflicted upon tricking Officers and Practicers, or their Litigious Clients,

ents, to silence the too litigious *Pro-
nouns Meum & Tuum* in a great mea-
sure, by lopping off many vexatious,
cross, and delatory Proceedings: And
if Officers for fear of Punishment for-
sake their bad practices; The benefit
accrewing to, and the indearment
of Your Subjects thereby, may tan-
tamout the profits falling short.

All which is humbly submitted

to Your

MAJESTIES

Royal Pleasure, &c.

FINIS.
